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**Nathan Katz Realty LLC, et al.¹ and Local 32B-32J,
Service Employees International Union, AFL-
CIO.** Case 29-CA-23280

May 23, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND
HURTGEN

Pursuant to a charge filed on January 27, 2000,² the General Counsel of the National Labor Relations Board issued a complaint on February 25, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 29-RC-9265. (Official notice is taken of the "re-record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On April 4, 2000, the General Counsel filed a Motion for Summary Judgment. On April 6, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

¹ The complaint names as the Respondent the following entities: Nathan Katz Realty LLC; 37-06 81st Street LLC; 37-30 81st Street LLC; 37-40 81st Street LLC; Lisa Realty LLC (owner of 37-25 81st Street building); 33-51 73rd Street LLC; 41-26 73rd Street LLC; 32-06 47th Street LLC; 34-10 84th Street LLC; 34-15 Parsons Boulevard LLC; 47-06 46th Street LLC; 47-05 45th Street; 43-09 47th Avenue LLC; Sunnywood Management Corp. (owner of 47-05 44th Street; 47-06 45th Street LLC; 44-08 47th Avenue and 44-14 47th Avenue); 99-60/65 64th Street LLC (owner of 99-60 64th Avenue and 99-65 64th Road); Rebecca Realty LLC (owner of 88-36 Elmhurst Avenue); Michelle Realty LLC (owner of 41-25 Case Street); Miriam Realty LLC (owner of 43-23 40th Street); RKL Realty LLC (owner of 43-08 40th Street); 37-37 88th Street LLC; 188-30/34 87th Drive LLC; Katz and Levy LLC (owner of 39-11 62nd Street, 39-15 62nd Street, and 39-19 62nd Street); NRM Realty LLC (owner of 35-65 86th Street); 35-16 34th Street LLC; 83-40 Britton Avenue LLC; 119-21 Metropolitan Avenue LLC; 34-09 83rd Street LLC; 98-30 67th Avenue LLC; 32-42 33rd Street LLC; and 32-52 33rd Street LLC. In the underlying representation proceeding, it was determined that these companies constitute a single employer and that an overall, multisite unit was appropriate for the purposes of collective bargaining.

² Although the Respondent's answer to the complaint denies having knowledge or information sufficient to form a belief as to whether the charge was filed by the Union on January 27, 2000, and served on the Respondent by regular mail on February 2, 2000, a copy of the charge and certificate of service are attached to the General Counsel's motion and the Respondent has not challenged the authenticity of those documents in response to the Notice to Show Cause. Accordingly, we find that the filing and the service of the charge has been established. *Electrical Workers IBEW Local 11 (Anco Electrical)*, 273 NLRB 183, 191 (1984).

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer, the Respondent admits in part and denies in part the complaint allegations that the Union requested bargaining and that the Respondent refused to bargain,³ but attacks the validity of the certification on the basis of its objections to the election and the Board's unit determination in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.⁴ The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.⁵

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a New York limited liability company, with its principal office and place of business located at 41-33 75th Street, Elmhurst, New York, (the Elmhurst facility), and with various other locations, where it has been engaged in managing various residential apartment buildings.⁶

During the 12-month period preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross annual revenues valued in excess of \$500,000 and purchased and received at its Elmhurst, New York facility, and at the facilities listed in footnote 1, goods and materials valued in excess

³ The Respondent admits that on January 21, 2000, the Union, in writing, requested to meet and bargain, and that on February 9, 2000, it refused to bargain. The Respondent denies that on November 4, 1999, the Union requested bargaining and that on December 22, 1999, the Respondent refused to bargain.

⁴ In its response to the Notice to Show Cause, the Respondent does not raise any matters warranting a hearing but instead relies on the record in the underlying representation case. We find that the Respondent's denials do not raise any issues warranting a hearing.

⁵ Member Hurtgen dissented from the denial of review of both the Decision and Direction of Election and the Supplemental Decision. He agrees, however, that nothing new is presented in this proceeding and accordingly, for institutional reasons, agrees that summary judgment is appropriate.

⁶ In its answer, the Respondent, with respect to the jurisdictional facts alleged in par. 2 of the complaint, admits only "that Nathan Katz Realty, LLC, is a New York limited liability company with its principal office and place of business located at 41-33 75th Street, Elmhurst, New York, and that it is the managing agent of the various residential apartment buildings listed" in fn. 1, supra. To the extent this response denies other allegations of that paragraph, it does not raise an issue warranting a hearing.

of \$5000 directly from enterprises located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held on July 27, 1999, the Union was certified on October 27, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time building service employees, including superintendents and porters employed by the Employer and the other companies listed in footnote 1 of this decision, at the various apartment buildings listed in footnote 1 of this decision, but excluding all business office clerical employees, maintenance craft employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

On January 21, 2000, the Union, in writing, requested the Respondent to bargain and, on February 9, 2000, the Respondent, by its counsel, in writing, refused to bargain. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after February 9, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Nathan Katz Realty, LLC, et al. and the other companies listed in footnote 1 of this decision, Elmhurst, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 32B-32J, Service Employees International Union, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time building service employees, including superintendents and porters employed by the Employer and the other companies listed in footnote 1 of this decision, at the various apartment buildings listed in footnote 1 of this decision, but excluding all business office clerical employees, maintenance craft employees, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Elmhurst, New York, copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 9, 2000.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 23, 2000

John C. Truesdale, Chairman

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 32B-32J, Service Employees International Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time building service employees, including superintendents and porters employed by us and the other companies listed in footnote 1 of the Board's Decision and Order, at the various apartment buildings listed in footnote 1 of the Board's Decision and Order, but excluding all business office clerical employees, maintenance craft employees, guards and supervisors as defined in the Act.

NATHAN KATZ REALTY, LLC, ET AL.